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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,234	11/09/2000	Jeffrey R. Boulter	00-8832	3098

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EXAMINER

LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/709,234

Applicant(s)

BOULTER ET AL.

Examiner

Arrienne M. Lezak

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 23.5.8.10.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-14, 17-26, 28-38 and 41-48 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 5,996,015 to Day.

3. Regarding Claims 1, 11, 12, 21, 24, 35, 36 and 46, Day discloses a method, system and interface for broadcasting data streams through a computer network, (including, but not limited to, the Internet - per pending Claims 12 and 36), to a user's computer, (Abstract; Fig. 1; and Col. 3, lines 27-28), comprising:

- providing a database of data streams available to said computer network, (Col. 5, lines 24-38);
- selecting a data stream according to a selection method, (Col. 5, lines 7-19);
- transmitting one of said data streams to the user's computer via a data stream controller and user interface including a media player, (Col. 5, lines 7-19);

- receiving feedback expressing a preference from the user regarding said transmitted data stream via a user interface which includes a data stream information display, (Col. 5, lines 7-22); and
- updating said selection method, modifying its selection of data streams for transmission to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said reference, (Col. 5, lines 7-52).

Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 1, 11, 12, 21, 24, 35, 36 and 46.

4. Regarding Claims 2, 17, 18, 22, 25, 41, 42 and 47, Day discloses a method, system and interface for broadcasting data streams through the Internet further comprising:

- generating a transmission list of data streams to transmit to the user's computer, (Col. 5, lines 7-19; Col. 6, lines 26-32; and Col. 9, lines 31-33);
- transmitting one of said listed data streams to the user's computer, (Col. 5, lines 7-19); and
- updating said list of data streams to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said preference, (Col. 5, lines 7-52).

Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 2, 17, 18, 22, 25, 41, 42 and 47.

5. Regarding Claims 3 and 26, Day discloses a method, system and interface for broadcasting data streams through the Internet further comprising receiving feedback expressing preferences from sources other than the user, (Col. 1, lines 43-58 and Col. 4, lines 23-64). Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 3 and 26.

6. Regarding Claims 5 and 28, Day discloses a method, system and interface for broadcasting data streams through the Internet further comprising informing the user generally regarding said database and said data streams, querying the user as to data stream preference prior to generating an initial transmission list of data streams, whereby said initial list reflects general preferences of the user, (Col. 5, lines 7-52). Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 5 and 28.

7. Regarding Claims 6, 13, 14, 29, 37 and 38, Day discloses a method, system and interface for broadcasting data streams through the Internet wherein said data streams are selected from the group consisting of songs and videos, (Col. 3, lines 24-26 and Col. 5, lines 58-60). Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 6, 13, 14, 29, 37 and 38.

8. Regarding Claims 7, 8, 30 and 31, Day discloses a method, system and interface for broadcasting data streams through the Internet wherein said transmitted data stream is removed from said transmission list, (per pending Claims 7 and 30), and listed on a

transmitted data stream list, (per pending Claims 8 and 31), (Col. 5, lines 7-67 and Col. 6, lines 1-31). Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 7, 8, 30 and 31.

9. Regarding Claims 34 and 45, Day discloses a method, system and interface for broadcasting data streams through the Internet wherein said updated selection method takes into account all preferences expressed by user, (Col. 5, lines 7-52). Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 34 and 45.

10. Regarding Claims 9, 10, 19, 20, 23, 32, 33, 43, 44 and 48, Day discloses a method, system and interface for broadcasting data streams through the Internet wherein conformance with applicable copyright law applies to all transmitted data streams, (Fig. 1; Fig. 2; and Col. 3, lines 1-32). Examiner notes that conformance with applicable copyright law inherently applies to all transmissions wherever and whenever they occur, to whomever they are displayed and for whatever they contain. Thus, as Day teaches the transmission of content generally, copyright law is inherently relevant and applicable to the same. Therefore this reference may reasonably be read to teach or describe every element or claim limitation of Claims 9, 10, 19, 20, 23, 32, 33, 43, 44 and 48.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4, 15, 16, 27, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over further consideration of US Patent 5,996,015 to Day. Day is relied upon for those teachings already disclosed herein above.

13. Regarding Claims 4 and 27, as noted above, Day discloses data stream selection from individuals other than the user, including but not limited to, a network administrator, manager or broadcast station, (Col. 1, lines 43-67). Day does not specifically enumerate that the "other users" derive their selection from a list of popular songs. It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to base a data stream selection on the most popular multimedia content available, as to do the opposite would not serve to cultivate an audience. As Day teaches the network distribution of on-demand multimedia, the available content would obviously need to be desired by, and thus popular among users, especially broadcast stations desirous of building an audience. Therefore, Claims 4 and 27 are unpatentable over further consideration of Day.

14. Regarding Claims 15, 16, 39 and 40, as noted above, Day discloses data stream transmission of multimedia content over the Internet, (Col. 5, lines 7-52). Day does not specifically enumerate the use of a user interface comprising an electronic media player, (per pending Claims 15 and 39), selected from a group consisting of RealPlayer, Apple QuickTime, and Windows Media Player, (per pending Claims 16 and 40). It would have been obvious to one of ordinary skill in the art at the time of invention by

Applicant to utilize an electronic media-capable interface within an Internet-capable multimedia distribution system, such as the one disclosed in Day. It would have been equally obvious to use a media player available and capable of multimedia distribution, such as RealPlayer, Apple QuickTime, and Windows Media Player. As Day teaches multimedia distribution over a network, including but not limited to the Internet, the use of an interface capable of such distribution would have been obvious and necessary. Therefore, Claims 15, 16, 39 and 40 are also unpatentable over further consideration of Day.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent 5,945,988 to Williams;

US Patent 6,026,439 to Chowdhury;

US Patent 5,499,046 to Schiller;

US Patent 5,941,951 to Day; and

US Patent 6,029,195 to Herz.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (703)-305-0717. The examiner can normally be reached on M-F 8:30-4:30.




If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (703)-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143

AML

  
**DAVID WILEY**  
SUPERVISORY PATENT EXAMINER  
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